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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MARIO JUAREZ,

Plaintiff,

v.

T-MOBILE USA, INC.,

Defendants.

Case No. 3:25-cv-05280-WHO

**DEFENDANT T-MOBILE USA, INC.'S
OPPOSITION TO PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING
ORDER**

Hearing

Date: Monday, July 7, 2025
Time: 2:00 p.m.
Courtroom: 2
Judge: Hon. William H. Orrick

1 **INTRODUCTION**

2 The Court should deny Plaintiff's request for a temporary restraining order because he cannot
3 and will not be able to show a likelihood of success, has not shown likely irreparable harm, and the
4 equities favor T-Mobile. The Court rightly observed in its Order that Plaintiff's own filings
5 demonstrate that his T-Mobile account "was 'cancelled' before he sought to port out the numbers."
6 (Dkt. 14 at 1.) That undisputed fact is dispositive of his TRO request.

7 T-Mobile canceled Plaintiff's account after he failed, for more than five months, to make
8 payments on an account balance exceeding \$29,000. Plaintiff incurred this substantial debt to
9 T-Mobile following a December 2024 shopping spree in which he purchased 16 devices including
10 numerous iPhones and iPads. *After* Plaintiff's account was canceled and his phone numbers
11 disconnected, he attempted to port his numbers to a new carrier, but his attempt failed because the
12 numbers could not be ported over from a canceled account. Even though he never requested a port
13 out prior to cancellation and T-Mobile had the clear right to cancel his account for non-payment,
14 Plaintiff seeks to enjoin T-Mobile from allowing the phone numbers on his canceled account to be
15 reassigned to other users consistent with standard procedures among telecommunications carriers.

16 Plaintiff's claims have no likelihood of success—and therefore cannot support a TRO—for
17 two simple reasons. First, T-Mobile had no obligation to port over Plaintiff's phone numbers after
18 his T-Mobile account was canceled for non-payment. Second, under 47 U.S.C. § 207, Plaintiff cannot
19 bring his federal claims after previously having filed a complaint with the Federal Communications
20 Commission ("FCC") for the same claims. So Plaintiff's litigation choices bar him from pursuing his
21 principal claims. Because Plaintiff is unlikely to succeed on the merits of his claims, he cannot meet
22 his burden to obtain a TRO. Moreover, Plaintiff offers no evidence of irreparable harm, relying solely
23 on conclusory assertions. Nor do the equities favor Plaintiff because T-Mobile's cancellation of the
24 account prior to the port out request was clearly justified and a product of Plaintiff's own conduct.
25 The Court should deny Plaintiff's motion.

26 **FACTUAL BACKGROUND**

27 On December 16, 2024, Plaintiff purchased at least 16 devices from T-Mobile, including 9
28 iPhones, 5 iPads, and 2 Apple watches. Declaration of Brian Bollig ¶¶ 4-5, Ex. 1 (hereinafter "Bollig

Decl.”). After down payments, the outstanding balance on those devices totaled \$13,409.92. *Id.*

On February 21, 2025, Plaintiff’s T-Mobile account was suspended due to non-payment of his bills. Bollig Decl. ¶ 6. On March 10, 2025, T-Mobile canceled Plaintiff’s account due to Plaintiff’s continued failure to make any payments. *Id.* ¶ 7.

On March 26, 2025, after several attempts by T-Mobile to contact Plaintiff and obtain payment, Plaintiff’s account was reinstated after he made a \$1,000.00 payment. *Id.* ¶ 8. At that time, Plaintiff further agreed to pay an additional \$5,000.00 in three weeks, followed by monthly \$5,000.00 payments thereafter until his account balance was satisfied. *Id.* However, Plaintiff made no further payments on his T-Mobile account after his \$1,000.00 payment on March 26, so T-Mobile suspended his account again on May 1, 2025. *Id.* ¶¶ 9-10.

After additional attempts to contact Plaintiff and obtain payment were unsuccessful, T-Mobile canceled his account on May 27, 2025. *Id.* ¶ 11; Dkt. 5 at 5-6, 15. At the time of the cancellation, the remaining outstanding balance on Plaintiff’s account was \$29,265.23. Bollig Decl. ¶ 11; Dkt. 5 at 15. At the time of the May 27, 2025 cancellation, Plaintiff had not requested that T-Mobile port out any phone numbers associated with the account. Bollig Decl. ¶ 12.

On May 28, 2025, the day after his account was cancelled (and the phone numbers therefore ceased to function), Plaintiff attempted to port out many of those telephone numbers to a new carrier, WaveStreet Data. (Dkt. 17 at p. 6 ¶ 4; Dkt. 5 at 5-6.) However, because Plaintiff’s T-Mobile account was cancelled, WaveStreet informed him that “[o]ne or more of the telephone numbers on this order is either disconnected or is no longer part of the account.” (Dkt. 5 at 5-6.) Because “[o]nly active telephone numbers assigned to end user’s *[sic]* can be ported,” WaveStreet was unable to port over Plaintiff’s T-Mobile telephone numbers. (*Id.*)

Due to the May 27, 2025 cancellation of Plaintiff’s account, phone numbers associated with his account will be eligible to be reassigned to another customer 45 days after cancellation of his account, on July 12, 2025. *See* 47 C.F.R. § 52.15(f)(1)(ii).

TRO STANDARD

The legal standard for a TRO is “substantially identical to the standard for a preliminary injunction.” *Facebook, Inc. v. BrandTotal Ltd.*, 499 F. Supp. 3d 720, 732 (N.D. Cal. 2020). “A

preliminary injunction is an extraordinary remedy never awarded as of right.” *Id.* (quoting *Winter v. Nat. Res. Defense Council, Inc.*, 555 U.S. 7, 24 (2008)). A plaintiff seeking a TRO has the burden to “establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Winter*, 555 U.S. at 20. Irreparable harm must be *likely*—it is not sufficient to grant a TRO upon a mere showing of a “possibility” of irreparable harm when the other factors weigh heavily in favor of the plaintiff. *See id.* at 22. Where the plaintiff has a low likelihood of success on the merits, courts refuse to enter a TRO even if other factors favor the plaintiff. *See, e.g., Washington v. Nat’l City Mortg. Co.*, No. 10-cv-5042, 2010 WL 5211506, at *6 (N.D. Cal. Dec. 16, 2010) (denying motion for TRO and preliminary injunction given plaintiffs’ failure to establish likelihood of success on the merits).

ARGUMENT

All of Plaintiff’s causes of action will fail, so he cannot obtain a TRO. First, T-Mobile had no obligation to port over Plaintiff’s phone numbers after his T-Mobile account was canceled for non-payment. Second, under 47 U.S.C. § 207, because Plaintiff previously filed a complaint with the FCC, Plaintiff cannot bring his federal claims for the same conduct. Because Plaintiff has not even raised “serious questions going to the merits,” the Court may deny his motion for TRO without addressing the remaining TRO factors. *See BrandTotal*, 499 F. Supp. 3d at 732; *Washington*, 2010 WL 5211506, at *6. Nevertheless, the other factors do not support Plaintiff’s TRO request. Plaintiff has failed to meet his burden to substantiate his request for a TRO.

I. Plaintiff is Not Likely to Succeed on the Merits.¹

A. All of Plaintiff’s Claims Fail Because T-Mobile is Not Required to Port Over Phone Numbers From a Canceled Account.

All of Plaintiff’s claims fail because the very premise of his entire lawsuit is incorrect. T-Mobile did not deny Plaintiff’s port out request because he had an outstanding balance, but rather

¹ In the interest of efficiently disposing of Plaintiff’s Motion on an expedited basis and due to the limited scope of the Court’s Order (Dkt. 14), this Opposition sets forth two primary reasons why all of Plaintiff’s claims will fail. T-Mobile reserves the right to raise additional arguments in response to any claims in a motion to dismiss or other responsive pleading. Further, T-Mobile reserves and does not waive the right to move to compel arbitration should this case proceed further beyond this request for temporary injunctive relief.

1 because his account was already canceled for non-payment. T-Mobile had no legal obligation to port
2 over Plaintiff's inactive phone numbers at the time he requested them, because his account already
3 had been canceled and his phone numbers disconnected.

4 Plaintiff's own allegations establish that his T-Mobile account was canceled *before* he
5 requested to port over any of his phone numbers to a new carrier. (Dkt. 17 at p.6 ¶ 4; Dkt. 16 at 6-7;
6 Dkt. 5 at 5-6., 15.) As shown in Plaintiff's exhibits and detailed in the attached declaration of Brian
7 Bollig, the cancellation of Plaintiff's account followed repeated failures to pay the balance due to
8 T-Mobile. *See supra* at 2-3. Indeed, Plaintiff's account previously had been canceled and suspended
9 for non-payment on multiple occasions between February and May 2025 before the final cancellation
10 on May 27, 2025. *See supra* at 3. That is why T-Mobile canceled the account and that action occurred
11 prior to any port out request.

12 Applicable regulations and guidance direct that porting obligations apply only to active
13 accounts. *See, e.g.*, 47 U.S.C. § 153(37) (limiting number portability to customer's "existing
14 telecommunications numbers"); [https://www.fcc.gov/consumers/guides/porting-keeping-your-phone-](https://www.fcc.gov/consumers/guides/porting-keeping-your-phone-number-when-you-change-providers)
15 [number-when-you-change-providers](https://www.fcc.gov/consumers/guides/porting-keeping-your-phone-number-when-you-change-providers) (advising consumers "[d]o not terminate your service with your
16 existing company before initiating new service with another company"); *cf.* Dkt. 5 at 5
17 (acknowledging that "[o]nly active telephone numbers assigned to end user's *[sic]* can be ported").
18 Plaintiff admits that his T-Mobile account has been canceled and that his phone numbers are
19 "disconnected," because disconnection is the requirement to trigger the FCC's 45-day aging rule. *See*
20 Dkt. 16 at 19, 7 C.F.R. § 52.15(f)(1)(ii).

21 Plaintiff repeatedly invokes carriers' general obligation to port active telephone numbers to a
22 new carrier upon request, but identifies no authorities requiring porting an inactive and canceled
23 account. *See* Dkt. 3 at 9-10; *see, e.g.*, 47 U.S.C. § 251(b)(2) (discussing a duty to provide number
24 portability only "to the extent technically feasible"); 47 C.F.R. §§ 52.26, 52.35 (setting forth interval
25 of one business day to port over phone numbers without reference to account status).² On the morning
26

27 ² Plaintiff also cites *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378 (1999), *Cent. Tel. Co. of Va. v.*
28 *Sprint13 Commc'ns Co.*, 715 F.3d 501, 509 (4th Cir. 2013), and *Global Crossing Telecomms., Inc. v.*
Metrophones Telecomms., Inc., 550 U.S. 45, 53 (2007), to support his federal claims (Dkt. 3 at 9), but
those decisions do not even substantively discuss carriers' phone number portability obligations.

1 of July 3, 2025, Plaintiff submitted to the Court additional materials purporting to clarify and identify
2 further legal support for his TRO request. (See Dkt. 22-24.) Plaintiff cites a number of federal statutes,
3 regulations, and administrative orders, none of which imposes an obligation to port disconnected
4 phone numbers from a canceled account. (See Dkt. 22 at 3-4; Dkt. 23 at 2.) Most notably, the only
5 authority Plaintiff identifies as requiring “porting for disconnected accounts,” a 2007 “FCC
6 Declaratory Ruling,” was not attached as an exhibit to Plaintiff’s filings nor available at the link
7 Plaintiff cited. (See Dkt. 23 at 2.) Counsel for T-Mobile have attempted to identify the cited order from
8 other sources and have not found any such order providing any support for Plaintiff’s claim.³

9 All of Plaintiff’s causes of action are contingent on T-Mobile’s purported obligation to port
10 over Plaintiff’s phone numbers and all of those claims fail in the absence of that obligation. Plaintiff’s
11 federal claims (Counts 1-6, 15-19) are all premised on an alleged obligation for T-Mobile to port over
12 Plaintiff’s phone numbers without conditioning porting on payment. (See, e.g., Dkt. 3 at 9; Dkt. 9 at
13 6; Dkt. 16 at 14-16.) Plaintiff’s California law claims (Counts 7-14, 20-24) similarly require unlawful
14 or fraudulent conduct. (See, e.g., Dkt. 3 at 10; Dkt. 16 at 17-18; Dkt. 17 at 12-16.) Those claims fail
15 where T-Mobile acted within its rights by canceling Plaintiff’s account for repeated non-payment and
16 by not porting over phone numbers from a canceled account. See, e.g., Dkt. 3 at 10; Dkt. 9 at 6; see
17 also, e.g., *Della Penna v. Toyota Motor Sales, U.S.A., Inc.*, 11 Cal. 4th 376, 393-94 (Cal. 1995)
18 (plaintiff alleging interference with prospective economic advantage must plead and prove the
19 “interference was wrongful by some measure beyond the fact of the interference itself”); *Burlesci v.*
20 *Petersen*, 68 Cal. App. 4th 1062, 1066 (1998) (conversion claim requires conversion “by a wrongful
21 act”); *Cel-Tech Commc’ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999) (claims under
22 California unfair competition laws require Defendant’s conduct to be “unlawful, unfair or
23 fraudulent”); Dkt. 17 at 15 (premising Count 20 on allegedly “false statements” about “porting
24 rights”).

25 Simply put, Plaintiff is not likely to succeed on the merits of any of his claims where T-Mobile
26 was not required to port over his phone number after his account was canceled and disconnected. It is
27

28 ³ See https://docs.fcc.gov/public/attachments/FCC-07-188A5_Rcd.pdf (2007 FCC Order numbered FCC 07-188).

1 Plaintiff's burden to show a likelihood of success on the merits. By failing to identify any legal
2 authority requiring porting of phone numbers from canceled accounts, Plaintiff has failed to meet his
3 burden. His request for a TRO should be denied on that basis alone.

4 **B. Plaintiff's Federal Claims Are Barred Under 47 U.S.C. § 207 Because Plaintiff**
5 **Filed a Complaint With the FCC.**

6 The federal causes of action in Plaintiff's First Amended Complaint allegedly are brought
7 pursuant to 47 U.S.C. § 207 for purported violations of the federal telecommunications laws and
8 related regulations. (*See* Doc. 17 at 10-15 (Counts 1-6, 15-19); *id.* at p. 3 ¶ 1 (claiming federal question
9 jurisdiction for claims "enforceable via 47 [U.S.C.] 207").) But under 47 U.S.C. § 207, Plaintiff may
10 not file both a complaint to the FCC and a federal lawsuit complaining of the same conduct. Because
11 Plaintiff admits he filed an FCC Complaint before this lawsuit, his federal claims must be dismissed.

12 47 U.S.C. § 207 provides telecommunications customers with a choice between filing a
13 complaint with the FCC and filing a private lawsuit in federal court:

14 Any person claiming to be damaged by any common carrier subject to the provisions
15 of this chapter may either make complaint to the Commission as hereinafter provided
16 for, or may bring suit for the recovery of the damages for which such common carrier
may be liable under the provisions of this chapter, in any district court of the United
States of competent jurisdiction; ***but such person shall not have the right to pursue
both such remedies.***

17 (Emphasis added.)

18 In light of this express statutory limitation, federal courts have held that a party that has
19 previously filed a complaint with the FCC is barred from bringing suit in federal court based on the
20 same claims. For example, in *Stiles v. GTE Southwest Inc.*, the plaintiff filed an informal complaint
21 with the FCC, followed by a federal lawsuit seeking damages under the Communications Act, both
22 alleging the same conduct by her local telecommunications company. 128 F.3d 904, 905 (5th Cir.
23 1997). The defendant telecommunications company filed a motion to dismiss, arguing *inter alia* that
24 the court lacked subject matter jurisdiction because the plaintiff had elected to pursue her claims
25 through the FCC and could not also file a federal lawsuit based on the same conduct. *Id.* at 905-06.
26 The district court granted the motion to dismiss, finding that the plaintiff "had elected to pursue her
27 claim administratively with the FCC, thereby precluding her from litigating her complaint in federal
28 court." *Id.* at 906. The Fifth Circuit affirmed, finding that "the language of the statute is unambiguous:

1 A complainant can file a complaint either with the FCC or in federal district court, but not in both.”
2 *Id.* at 907 (holding that “§ 207 precludes a complainant from filing suit in federal court once she has
3 initiated the administrative complaint process with the FCC either by filing a formal or informal
4 complaint”).

5 Other federal courts have held the same and dismissed federal claims by plaintiffs who
6 previously filed a complaint with the FCC. *See Premiere Network Servs., Inc. v. SBC Commc’ns, Inc.*,
7 440 F.3d 683, 688 (5th Cir. 2006) (“[S]ection 207 is an election-of-remedies provision ... once an
8 election is made by either filing a complaint with the FCC or filing a complaint in federal court, a
9 party may not thereafter file a complaint on the same issues in the alternative forum, regardless of the
10 status of the complaint); *Mexiport, Inc. v. Frontier Commc’ns Servs., Inc.*, 253 F.3d 573, 575 (11th
11 Cir. 2001) (holding that appellant could not file in federal court after having filed informal complaint
12 with FCC); *Digitel, Inc. v. MCI Worldcom, Inc.*, 239 F.3d 187, 190 (2d Cir. 2001) (concluding that “a
13 party that has filed an informal complaint [with the FCC] may not also sue in district court”);
14 *Cincinnati Bell Tel. Co. v. Allnet Commc’n Servs., Inc.*, 17 F.3d 921, 923 (6th Cir. 1994) (deciding
15 appellant could not have filed a counterclaim in the district court on the same dispute that was the
16 subject of its FCC complaint); *Bell Atlantic Corp. v. MFS Commc’ns Co.*, 901 F. Supp. 835, 853 (D.
17 Del. 1995) (holding that the district court did not have jurisdiction to hear complaint on same issues
18 brought to the FCC).

19 Here, Plaintiff’s own allegations establish that he has filed a complaint with the FCC based on
20 the same conduct at issue in his complaint. (*See* Dkt. 17 at p. 8 ¶ 9; Dkt. 16 at p. 7 ¶ E.) Because
21 Plaintiff elected to file a complaint with the FCC before filing suit, he cannot also pursue federal claims
22 based on the same conduct. Plaintiff’s FCC complaint deprives the Court of subject matter jurisdiction
23 over his federal claims and warrant dismissal of his entire lawsuit.⁴

24 **II. The Remaining TRO Factors Do Not Support a TRO.**

25 None of the remaining factors favor Plaintiff and certainly are not sufficient to warrant a TRO

26 ⁴ Courts dismissing federal claims by Plaintiffs who previously filed complaints with the FCC also
27 decline supplemental jurisdiction over pendent state-law claims. *See, e.g., Premiere Network Servs.*,
28 440 F.3d at 692. Here, Plaintiff alleges only supplemental jurisdiction over his “California claims”
(Counts 7-14, 20-24) and federal question jurisdiction over his federal claims (Counts 1-6, 15-19).
(*See* Dkt. 17 at 3-4.) As a result, all of Plaintiff’s causes of action should be dismissed.

1 given Plaintiff's inability to show a likelihood of success on the merits. *See BrandTotal*, 499 F. Supp.
2 3d at 732 (TRO requires "serious questions going to the merits" even where other factors favor TRO);
3 *Washington*, 2010 WL 5211506, at *6.

4 **A. Plaintiff Has Not Proven That He Will Likely Suffer Irreparable Harm by**
5 **Losing His Phone Numbers.**

6 Plaintiff fails to show that he will suffer irreparable harm sufficient to support the extraordinary
7 remedy of enjoining T-Mobile to port over an inactive account.

8 As an initial matter, Plaintiff only provides conclusions in support of his assertion that losing
9 access to certain phone numbers will irreparably harm his business. (Dkt. 16 at 18-19.) He does not
10 even identify what the business is, what services it provides, or explain in any level of detail how the
11 alleged loss of phone numbers would concretely impact its operations. (*Id.*) As the Ninth Circuit has
12 highlighted, "[a] finding of likely irreparable harm cannot be based on unsupported and conclusory
13 statements regarding harm—it must be based on factual findings." *Freelancer Int'l Pty Ltd. v. Upwork*
14 *Global, Inc.*, 851 Fed. Appx. 40, 41-42 (9th Cir. June 22, 2021) (internal quotations omitted).

15 Even crediting Plaintiff's conclusory allegations, they still fail to establish irreparable harm.
16 Plaintiff generically claims he will suffer irreparable harm if he loses phone numbers because they are
17 tied to his business and he will lose "the means of communication with customers." (Dkt. 16 at 18-
18 19.) But these phone numbers have been repeatedly suspended or canceled over the last five months
19 due to Plaintiff's non-payment of his substantial balance. *See supra* at 3. Plaintiff does not contend
20 that those lengthy suspensions of his accounts (which were entirely a result of Plaintiff's own non-
21 payment) had any irreparable consequences for his business and therefore cannot credibly contend a
22 permanent closure of these numbers would cause irreparable harm.

23 Furthermore, Plaintiff can notify his customers of his new contact information, mooted the
24 risk of irreparable harm. Plaintiff acknowledges that he will be able to replace those phone numbers
25 with new numbers to contact customers, but merely claims they "cannot be perfectly replaced." (*Id.* at
26 19.) Any harm Plaintiff may suffer from the loss of his phone numbers will be limited, a function of
27 his own choice to incur a significant balance entitling T-Mobile to cancel his account prior to any port
28 out request, and may be repaired—even if not "perfectly"—by obtaining new phone numbers. *See*

1 *C21FC LLC v. NYC Vision Cap. Inc.*, No. 22-cv-00736, 2022 WL 2191934, at *8 (D. Ariz. June 17,
2 2022) (denying TRO where Plaintiffs alleged only speculative harm “based on loss of clientele,
3 business, and goodwill”).

4 **B. The Balance of the Equities Does Not Tip in Plaintiff’s Favor.**

5 Equities favor T-Mobile’s ability to terminate accounts for non-payment over a consumer’s
6 belated port request. Contrary to Plaintiff’s charged characterization, this circumstance is a problem
7 entirely of Plaintiff’s own making. Plaintiff chose to order 16 devices in December 2024 causing a
8 significant balance, then chose not to pay for them—even under a modified payment plan he negotiated
9 with T-Mobile in March 2025—until his account was canceled. *See supra* at 2-3. There is no dispute
10 that T-Mobile was entitled to cancel his account for non-payment. Only after T-Mobile canceled his
11 account for non-payment did Plaintiff attempt to port over his phone numbers to escape his payment
12 obligations. *See supra* at 3.

13 T-Mobile, on the other hand, gave Plaintiff many opportunities over the past six months to
14 keep his account active despite his failure to make payments on his account. *See supra* at 3. In light of
15 Plaintiff’s conduct, the equities do not tip in his favor, let alone tip “sharply” toward him. *BrandTotal*,
16 499 F. Supp. 3d at 733. This factor does not support granting a TRO. *See, e.g., Scottsdale Gas Co.*
17 *LLC v. Tesoro Ref. & Mktg. Co. LLC*, No. 19-cv-19-05291, 2020 WL 954963, at *3 (D. Ariz. Feb. 27,
18 2020) (finding balance of equities a neutral factor and denying preliminary injunction based on
19 Plaintiff’s allegedly improper actions in breaching parties’ agreement).

20 **C. A TRO is Not in the Public Interest.**

21 Finally, granting a TRO is not in the public interest. The FCC only requires phone numbers to
22 be aged for 45 days after permanent disconnection. 47 C.F.R. § 52.15(f)(1)(ii). T-Mobile properly
23 disconnected Plaintiff’s phone numbers for non-payment (*see supra* at 3), and those phone numbers
24 should be returned to the available numbering pool for public reassignment once the FCC’s aging rules
25 have been satisfied. That is the structure created by the FCC and it should not be disrupted to favor a
26 claimant whose account was properly canceled prior to any port request.

1 **CONCLUSION**

2 For the foregoing reasons, T-Mobile respectfully requests that the Court deny Plaintiff's
3 motion for a Temporary Restraining Order.

4 Dated: July 3, 2025

Respectfully submitted,

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/s/ Lynn R. Fiorentino
Lynn R. Fiorentino